

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #15	CCRB Case #: 201706773	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/10/2017 10:30 AM	Location of Incident: Rear of 397 Coney Island Avenue	Precinct: 70	18 Mo. SOL 2/10/2019	EO SOL 2/10/2019	
Date/Time CV Reported Thu, 08/17/2017 2:40 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/17/2017 2:40 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Raheb	28396	955356	SRG 3
2. POM Miguel Vivas	16190	955642	SRG 3

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Raheb	Abuse: Police Officer Michael Raheb searched the vehicle in which § 87(2)(b) was an occupant.	
B.POM Michael Raheb	Force: Police Officer Michael Raheb used physical force against § 87(2)(b)	
C.POM Miguel Vivas	Force: Police Officer Miguel Vivas used physical force against § 87(2)(b)	

Case Summary

On August 17, 2017, § 87(2)(b) filed this complaint with the CCRB via the telephone. Also on August 17, 2017, § 87(2)(b) called the IAB Command Center and filed a duplicate complaint. Original Log #2017-32497 was generated and it was received at the CCRB on August 30, 2017.

On August 10, 2017, § 87(2)(b) was issued a summons by New York City Parks Enforcement Patrol Officer § 87(2)(b) for refusing to move his motor vehicle from a permit-only parking spot. § 87(2)(b) then ripped up the summons and threw it to the ground, and PEP Officer § 87(2)(b) requested assistance from Police Officer Miguel Vivas and Police Officer Michael Raheb of Strategic Response Group 3 who were stationed nearby. After a brief discussion between the officers and § 87(2)(b) began walking towards his vehicle. PO Raheb asked § 87(2)(b) if he was driving without a license and § 87(2)(b) replied that he was not driving. When they reached his vehicle, PO Raheb opened the driver's door and leaned his head and upper chest inside (**Allegation A**). After PO Raheb leaned back out § 87(2)(b) shut the door of his vehicle. PO Raheb then grabbed § 87(2)(b)'s left wrist and attempted to twist it behind his back. PO Vivas then pushed on § 87(2)(b)'s left hip causing all three of them to fall to the ground. While on the ground, the officers attempted to pull § 87(2)(b)'s arms behind his back and PO Raheb allegedly pushed § 87(2)(b)'s head into the ground two times, causing a cut above his right eye (**Allegations B and C**). After approximately five minutes on the ground, § 87(2)(b) was placed in handcuffs. § 87(2)(b) was charged with resisting arrest, obstructing governmental administration, littering, failure to comply with a sign, and disorderly conduct. § 87(2)(b)'s arresting officer was PO Raheb.



201706773_20171024_1056_DM.mp4



201706773_20171024_1057_DM.mp4

Video footage of this incident was obtained on October 24, 2017 via a Reznick request for IAB Case File #F20172491. The footage was obtained by the NYPD from the New York City Parks Department. The provided footage includes two Snag-It clips which depict § 87(2)(b)'s interaction with PEP Officer § 87(2)(b) and § 87(2)(b)'s interaction with PO Raheb and PO Vivas. The footage has no sound and runs with a continuous timestamp. A request for the unedited footage was submitted to IAB on October 24, 2017, and at the time of this report has not been fulfilled (BR 01, BR 02).

Mediation, Civil and Criminal Histories

- This case was deemed unsuitable for mediation due to § 87(2)(b)'s arrest.
- On November 14, 2017, a FOIL request for notices of claim was submitted to the Office of the New York City Comptroller. The results of this inquiry will be added to the case file upon receipt.
- On November 15, 2017, the New York State Office of Court Administration database was accessed and revealed that § 87(2)(b) has no criminal convictions in New York State over the past ten years. The criminal charges stemming from this incident are still active. § 87(2)(b)'s next court date is scheduled for § 87(2)(b) (BR 03).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (BR 04).

- This is PO Raheb's first CCRB complaint during his four year tenure.
- This is PO Vivas' first CCRB complaint during his four year tenure.

Potential Issues

On advice of his criminal attorney § 87(2)(b), § 87(2)(b) refused to provide identifying information for witnesses of the incident, video footage, or sign HIPPA's attesting to any physical injury he may have suffered.

Findings and Recommendations

Allegations not pleaded

- **Abuse of Authority- Threat of Arrest:** During his sworn statement on October 25, 2017, PEP Officer § 87(2)(b) testified that PO Raheb informed § 87(2)(b) that if he did not have a driver's license, and attempted to drive, he would be pulled over and that driving without a license was an arrestable offense. As this allegation was not alleged by § 87(2)(b) and as alleged constitutes a statement of fact, it is not being pleaded (BR 05).
- **Abuse of Authority- Search of Person:** In the video footage, obtained by the investigation via IAB, PO Vivas can be seen reaching inside § 87(2)(b)'s shorts pockets. PO Vivas and PO Raheb confirmed that the search incident to a lawful arrest and that § 87(2)(b) was considered under arrest as soon as he resisted being detained. Thus the search of person is not being pleaded (BR 01, BR 06, BR 07).

Allegation A –Abuse of Authority: Police Officer Michael Raheb searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Raheb searched § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b) testified that after a brief discussion with PO Raheb and PO Vivas, he began walking towards his vehicle which was approximately 15 feet away. As he walked away, PO Raheb told him to come back and § 87(2)(b) said no. PO Raheb then asked § 87(2)(b) to provide identification and § 87(2)(b) stated that he did not have it because he was at work. § 87(2)(b) testified that his identification was inside his wallet, which was located inside his vehicle, however § 87(2)(b) did not inform the officer of this. As soon as § 87(2)(b) and PO Raheb reached the driver's door, PO Raheb opened the door, leaned in with his head and upper chest, and looked around. § 87(2)(b) asked him what he was looking for and PO Raheb did not respond. After approximately eight to ten seconds, PO Raheb exited the vehicle (BR 08).

PO Raheb testified that after the discussion between § 87(2)(b) and the officers in the parking lot, § 87(2)(b) took several pieces of paper out of his pocket and threw them on the floor. PO Raheb instructed § 87(2)(b) multiple times to pick up the litter and § 87(2)(b) refused. As this was going on, § 87(2)(b) was walking towards his vehicle with PO Raheb walking behind him. PO Raheb then asked § 87(2)(b) for his identification in order to issue him a summons for littering. § 87(2)(b) replied that he did not have any identification. PO Raheb asked approximately four more times and each time § 87(2)(b) indicated that he did not have identification. During this time, PO Raheb also asked § 87(2)(b) if he had identification inside his vehicle, which § 87(2)(b) stated he did not. When they reached the driver's door of § 87(2)(b)'s vehicle, § 87(2)(b) opened the driver's door. As he did so, PO Raheb grabbed § 87(2)(b)'s wrist to stop him from doing so. § 87(2)(b) stated, "You're not writing me, I don't

have ID.” PO Raheb then opened the driver’s door further and leaned his upper torso in. He looked around for approximately five to ten seconds then exited the vehicle. PO Raheb testified that he entered the vehicle because he wanted to check to see if § 87(2)(b)’s identification was in view. He testified that he also entered the vehicle to see if there were any weapons that § 87(2)(b) could have lunged or reached for. PO Raheb testified that he believed it was possible that there was a weapon inside based on § 87(2)(b)’s demeanor, which he described as aggressive. He described § 87(2)(b) as aggressive because § 87(2)(b) was raising his voice, flailing his arms, and not complying with lawful orders (BR 07).

Both PEP Officer § 87(2)(b) and PO Vivas testified that they did not observe PO Raheb enter the vehicle. PO Vivas testified that, while the vehicle’s door was opened, PO Raheb and he looked into the vehicle with the intention of seeing if § 87(2)(b)’s identification was in plain view. Their statements regarding § 87(2)(b)’s demeanor, resistance to being detained, and failure to provide his identification are consistent with that of PO Raheb (BR 05, 06).

An officer breaching the plane of the car doorway with his body or his arm to reach inside the vehicle, even if to obtain a better visual of the interior of the car, does constitute a search of that vehicle. An officer may search a vehicle only if there is probable cause that it contains contraband, weapons, or evidence of a crime. People v. Hernandez, 238 A.D.2d 131(1997)(BR 10)

§ 87(2)(b), § 87(2)(g)

Allegation B –Force: Police Officer Michael Raheb used physical force against § 87(2)(b)

Allegation C –Force: Police Officer Miguel Vivas used physical force against § 87(2)(b)

It is undisputed that PO Raheb and PO Vivas used physical force to overcome § 87(2)(b)’s resistance.

§ 87(2)(b) testified that as soon as PO Raheb concluded his search of the vehicle, PO Raheb grabbed him by the left wrist. § 87(2)(b) stiffened his arm and told the officer to get off of him. PO Raheb was twisting § 87(2)(b)’s arm towards his back causing § 87(2)(b) to lean his right side onto his vehicle. As PO Raheb was doing so, he stated, “You’re resisting arrest.” PO Vivas then pushed on § 87(2)(b)’s left hip causing § 87(2)(b) to fall to the ground on his stomach with PO Raheb on his upper body and PO Vivas towards his legs. PO Raheb was then

holding his arms, moving them around and twisting them towards his back. PO Raheb also had his knee on top of § 87(2)(b)'s back. As he was doing so, PO Raheb pushed § 87(2)(b)'s head into the ground two separate, consecutive, times. § 87(2)(b) testified that while the officers were on top of him, he continued to stiffen his arms. § 87(2)(b) suffered a cut above his right eye, which was sustained when his head was pushed into the ground. He also suffered a soft tissue injury to his right index finger, which he suffered while he was on the ground. § 87(2)(b) testified that he received medical treatment for these injuries after being released from police custody (BR 08).



2017-11-15_15-48-16.mp4

In the video footage, PO Raheb can be seen making contact with § 87(2)(b)'s left arm at 08:25:08. PO Raheb appears to attempt to bring § 87(2)(b)'s arm down, towards his back at 08:25:21. A struggle ensues in which § 87(2)(b) pulls away from the now two officers trying to grab him. After a continued struggle, § 87(2)(b) goes to the ground at 08:25:44. The officers then appear to pull at § 87(2)(b)'s arms, however they struggle to do so. At 08:26:09, the officers get one handcuff on § 87(2)(b)'s right arm. At 08:26:34, both officers move off of § 87(2)(b) and he is in handcuffs. At no point during the struggle does it appear that § 87(2)(b)'s head is pushed into the ground by either officer. It does not appear that either officer makes any contact with § 87(2)(b)'s head. While § 87(2)(b) is on the ground he is squirming and appears to be moving his arms and legs (BR 12).

PEP Officer § 87(2)(b) testified that while they were at the door of § 87(2)(b)'s vehicle, PO Raheb instructed § 87(2)(b) to put his hands behind his back. When § 87(2)(b) refused, PO Raheb attempted to grab § 87(2)(b)'s hands. § 87(2)(b) flailed his arms behind him and above his head. As he did so he yelled at PO Raheb to get off of him and not to touch him. PO Vivas then approached and all three went to the ground. PEP Officer § 87(2)(b) did not see how they went to the ground. PEP Officer § 87(2)(b) observed § 87(2)(b) squirming on the ground while the officers, who were straddling him, pulled his arms behind his back. PEP Officer § 87(2)(b) denied observing either officer push § 87(2)(b)'s head into the ground (BR 05).

PO Raheb testified that as § 87(2)(b) opened his driver's door, PO Raheb grabbed his wrist. As PO Raheb was holding his arm, § 87(2)(b) flailed his arms, dropped his weight, and took a big step away from the officer. PO Vivas approached and grabbed § 87(2)(b) by his waist. As he did so, PO Raheb attempted to pull § 87(2)(b)'s arm behind his back to place him in handcuffs. § 87(2)(b) continued to flail his arms and attempt to pull away. The momentum of § 87(2)(b) attempting to pull away cause all three to fall to the ground. PO Raheb landed on top of § 87(2)(b)'s back. PO Raheb continued to pull on § 87(2)(b)'s arms to attempt to get them behind his back. § 87(2)(b) resisted by pulling his arms under his chest. PO Raheb denied pushing § 87(2)(b)'s head into the ground and denied observing his partner do so. Other than pulling on § 87(2)(b)'s arms, PO Raheb did not do anything else to get his arms behind his back. PO Raheb then placed handcuffs on § 87(2)(b) (BR 07).

PO Vivas testified that when the officers attempted to place § 87(2)(b) in handcuffs to detain him for identifying purposes, § 87(2)(b) began flailing his arms and took several steps away

from the officers. PO Vivas couldn't recall which officer made first contact with § 87(2)(b). He recalled being behind § 87(2)(b)'s back while PO Raheb was in front. PO Vivas attempted to grab one of § 87(2)(b)'s arms but could not because § 87(2)(b) was flailing them. As § 87(2)(b) was taking steps away from the officers, PO Vivas grabbed one of § 87(2)(b)'s legs. § 87(2)(b) and the officers then fell as a result of § 87(2)(b)'s momentum. PO Vivas testified that while it was not intentional, they had to take § 87(2)(b) to the ground because he was moving away from them as they attempted to detain him. Once on the ground, PO Vivas attempted to pull § 87(2)(b)'s left arm behind his back to handcuff him. § 87(2)(b) resisted by pulling his arms under his chest. Other than pulling on § 87(2)(b)'s arms, PO Vivas did not do anything additional to overcome § 87(2)(b)'s resistance. PO Vivas denied pushing § 87(2)(b)'s head into the ground and denied observing PO Raheb do so (BR 06).

Force may be used when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide 221-01 (BR 11).

§ 87(2)(b), § 87(2)(g)

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Squad: 15

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date